



# GENERAL ASSEMBLY

## COMMONWEALTH OF KENTUCKY

### 2012 REGULAR SESSION

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HOUSE BILL NO. 465

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TUESDAY, MARCH 6, 2012

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The following bill was reported to the Senate from the House and ordered to be printed.

RECEIVED AND FILED  
DATE April 11, 2012  
4:20 p.m.  
ALISON LUNDERGAN GRIMES  
SECRETARY OF STATE  
COMMONWEALTH OF KENTUCKY  
BY Mary Sue Johnson

1 AN ACT relating to brownfield redevelopment.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER  
4 224 IS CREATED TO READ AS FOLLOWS:

5 *(1) A Brownfield Redevelopment Program is established and shall be administered*  
6 *by the cabinet.*

7 *(2) In addition to any other defenses provided by law, a person that owns real*  
8 *property where a release of petroleum governed by KRS 224.01-405 or a release*  
9 *of a hazardous substance, pollutant, or contaminant governed by KRS 224.01-*  
10 *400 has occurred shall not be liable for performing characterization, correcting*  
11 *the effects of the release on the environment, or performing corrective action of*  
12 *the release if:*

13 *(a) The person certifies to the cabinet and the cabinet finds that:*

14 *1. The release occurred prior to the property owner's acquisition of the*  
15 *property;*

16 *2. The property owner made all appropriate inquiries into previous*  
17 *ownership and uses of the property in accordance with generally*  
18 *accepted practices;*

19 *3. The property owner or a responsible party has provided all legally*  
20 *required notices under this chapter with respect to hazardous*  
21 *substances, pollutants, contaminants, petroleum, or petroleum*  
22 *products found at the property;*

23 *4. The property owner is in compliance with all land use restrictions and*  
24 *will not impede the effectiveness or integrity of any institutional*  
25 *control required for the property;*

26 *5. The property owner complied with any information requests by the*  
27 *cabinet under this chapter;*

1       6. The property owner is not and has not been affiliated with any person  
 2       who is potentially liable for the release of hazardous substances,  
 3       pollutants, contaminants, petroleum, or petroleum products on the  
 4       property pursuant to KRS 224.01-400 or 224.01-405 or Section 2 of  
 5       this Act through:

6       a. Direct or indirect familial relationship;

7       b. Any contractual, corporate, or financial relationship, excluding  
 8       relationships created by instruments conveying or financing title  
 9       or by contracts for sale of goods or services; or

10      c. Reorganization of a business entity that was potentially liable;  
 11      and

12      7. The property owner has not caused or contributed to the release;

13      (b) The cabinet concurs in writing that the intended future use of the property  
 14      will not interfere with remediation of the release as required by the cabinet,  
 15      increase the impacts of the release on human health or the environment, or  
 16      expose the public and environment to unacceptable harm; and

17      (c) The person provides any person conducting characterization, correcting of  
 18      the effect of the release on the environment, or undertaking corrective or  
 19      remedial action, as well as the cabinet, with access to the property so  
 20      necessary remediation activities can be completed.

21      (3) The nonliability provided in this section shall not apply to any real property for  
 22      which a false certification is made to the cabinet.

23      (4) The cabinet may, by administrative regulation, establish procedures for the  
 24      implementation of this section and Sections 2 and 3 of this Act, which may  
 25      include administrative forms, technical standards, and fees to cover the cost of  
 26      the cabinet's reviews.

27      ➔Section 2. KRS 224.60-135 is amended to read as follows:

1 (1) As required under administrative regulations of the cabinet, a petroleum storage  
 2 tank owner or operator shall commence, or contract for, corrective action for a  
 3 release into the environment from a petroleum storage tank. *A property owner who*  
 4 *is not also the petroleum storage tank owner or operator shall have no obligation*  
 5 *to perform corrective action for a release into the environment from a petroleum*  
 6 *storage tank.*

7 (2) If a petroleum storage tank owner or operator fails or refuses to take corrective  
 8 action, the cabinet may draw funds from the unobligated balance of the fund to  
 9 initiate, or contract for, corrective action pursuant to KRS 224.60-105 to 224.60-  
 10 160 in accordance with subsection (3) of the section.

11 (3) Except as provided in subsection (4) of this section, before initiating, or contracting  
 12 for, corrective action, the cabinet shall make a reasonable effort to notify and  
 13 provide to the petroleum storage tank owner or operator an opportunity to comply  
 14 with the requirements of this section.

15 (4) The cabinet may draw funds from the unobligated balance of the fund to undertake,  
 16 or contract for, corrective action necessary to prevent or remedy an emergency  
 17 situation threatening public health, safety, or the environment, resulting from a  
 18 release into the environment from a petroleum storage tank, unless a petroleum  
 19 storage tank owner or operator is taking appropriate action to abate emergency  
 20 situations in accordance with administrative regulations of the cabinet.

21 (5) Within six (6) months from April 9, 1990, the state fire marshal shall promulgate  
 22 administrative regulations which require any person or organization who installs,  
 23 repairs, closes, or removes an underground storage tank for a petroleum storage tank  
 24 owner or operator to demonstrate financial capability, including the maintenance of  
 25 pollution liability insurance, and technical competency and proficiency.


26 ➔ Section 3. KRS 224.60-138 is amended to read as follows:

27 (1) If corrective action for a release from or closure of a petroleum storage tank reduces

1 levels of contamination to less than the standards established pursuant to the  
2 administrative regulations adopted under KRS 224.60-137, then the cabinet shall  
3 approve the corrective action or closure and issue a notice to the owner or operator  
4 that no further action is required to address the petroleum contamination. *This*  
5 *notice shall indicate that the property is not subject to any additional actions*  
6 *under KRS 224.01-400 or 224.01-405.*

- 7 (2) A person who submits a corrective action proposal to the cabinet may request in  
8 writing a final determination on the proposal no sooner than thirty (30) days after its  
9 submission. When a final determination on the proposal is requested, the cabinet  
10 shall make its final determination within sixty (60) working days from the date the  
11 request is received by the cabinet. After a final determination has been made, the  
12 person requesting the final determination may request a hearing pursuant to the  
13 provisions of KRS 224.10-420. Nothing in this subsection shall relieve any person  
14 of any obligations imposed by law during an environmental emergency, nor shall it  
15 require the cabinet to approve a proposal which would violate this chapter or the  
16 administrative regulations promulgated pursuant thereto.

  
Speaker-House of Representatives

  
\_\_\_\_\_  
President of Senate

Attest:

Dean E. Burgin  
Chief Clerk of House of Representatives

Approved

  
Governor

Date \_\_\_\_\_

4-11-12